

LAW OFFICES OF
LONDON & ROBIN

IRA D. LONDON (ret.)
AVROM ROBIN

99 PARK AVENUE
SUITE 2600
NEW YORK, NEW YORK 10016
TEL: 212-683-8000
FAX: 212-683-9422
EMAIL: iradlondon@aol.com
avrom@mindspring.com

VIA ECF and EMAIL

October 16, 2020

The Honorable Cathy Seibel
United States District Judge
United States Courthouse
300 Quarropas Street
White Plains, New York 10601

The application is granted. I am informed that neither the Government nor Probation objects. Congratulations to Mr. Martin. Mr. Robin shall provide a copy of this endorsement to Probation.

SO ORDERED.


CATHY SEIBEL, U.S.D.J.

10/19/20

Re: United States v. Joshua Martin
12-CR-111-26 (CS)

Dear Judge Seibel:

I write regarding my client Joshua Martin, to request early termination of supervised release pursuant to 18 U.S.C. § 3583(e).

BACKGROUND

On December 12, 2012, the Court sentenced Mr. Martin to a term of imprisonment of 70 months and a five year term of supervised release, after a previously entered plea of guilty pursuant to a plea agreement. *See* Judgment, ECF 177.

On May 11, 2015, the Court granted a motion for a sentence reduction pursuant to 18 U.S.C. § 3582(c)(2). Mr. Martin's sentence was reduced to a term of imprisonment of 60 months and a five year term of supervised release. *See* Order Regarding Motion for Sentence Reduction, ECF 352.

Mr. Martin was released from the custody of the B.O.P. on October 14, 2016 to begin his term of supervised release, and so has served four years to date.

STATUTORY AND CASE LAW BASIS FOR THIS REQUEST

18 U.S.C. § 3583, Inclusion of a term of supervised release after imprisonment, provides in applicable part:

(e) Modification of conditions or revocation. The court may, after considering the factors set forth in section 3553 (a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7) [18 USCS § 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)]--

(1) terminate a term of supervised release and discharge the defendant released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice(.)¹

Federal Rule of Criminal Procedure Rule 32.1 Revoking or Modifying Probation or Supervised Release provides in applicable part:

(c) Modification.

(1) In General. Before modifying the conditions of probation or supervised release, the court must hold a hearing, at which the person has the right to counsel and an opportunity to make a statement and present any information in mitigation.

(2) Exceptions: A hearing is not required if:

(A) the person waives the hearing; or

(B) the relief sought is favorable to the person and does not extend their term of probation or supervised release; and

(C) an attorney for the government has received notice of the relief sought, has had a reasonable opportunity to object, and has not done so.

¹ “Interest(s) of justice” is defined as “The proper view of what is fair and right in a matter in which the decision-maker has been granted discretion.” This definition dates to the 17th century. *Black’s Law Dictionary*, 11th Edition, Thomson Reuters, 2019.

In *United States v. Sheckley*, 1997 U.S. App. LEXIS 32024, the Second Circuit wrote, “We have explained that the determination of early release is a discretionary decision made by the district court. See *United States v. Lussier*, 104 F.3d 32, 36 (2d Cir. 1997). Early termination is not warranted as a matter of course; on the contrary, it is only ‘occasionally’ justified due to ‘changed circumstances’ of a defendant, such as ‘exceptionally good behavior.’ *Id.*”

Lussier was also cited in a recent Southern District decision. “The Second Circuit has further explained that early termination of probation may be appropriate ‘to account for new or unforeseen circumstances,’ like ‘exceptionally good behavior by the defendant.’ *United States v. Lussier*, 104 F.3d 32, 36 (2d Cir. 1997)(considering a request in the analogous context of early termination of supervised release.” *United States v. Kassim*, 2020 U.S. Dist. LEXIS 90357*3,4; 2020 WL 2614760, 15 Cr. 554-3, (KPF)(SDNY). The Court in *Kassim* denied the request for early termination without prejudice and invited the defendant’s counsel to submit detailed information about his progress on supervised release, because the specifics of his progress were only generalized on the initial application. *Id.*, *5.

Other District Court Judges have recognized that early termination is appropriate in some cases. For example, in *United States v. Trotter*, 321 F. Supp. 3d 337 (E.D.N.Y. 2018), 2018 U.S. Dist. LEXIS 111946; 2018 WL 3321426, District Judge Jack B. Weinstein noted that the Eastern District Probation Office recommends early termination where warranted, because the resources of the probation department are limited, and should be focused where needed. *Id.* at 340.

The Office of Probation and Pretrial Services, Administrative Office of the U.S. Courts, in a 2013 article entitled *Early Termination of Supervision: No Compromise to Community Safety*, stated “early termination is a practice that holds promise as a positive incentive for persons under supervision and as a measure to contain costs in the judiciary without compromising the mission of public safety.” See, <https://www.uscourts.gov/federal-probation-journal/2013/09/early-termination-supervision-no-compromise-community-safety>

DISCUSSION

Joshua Martin, now age 32, is married and lives in the Bronx, New York with his wife and son, who is 12 years old. Mr. Martin was working last year as a crane operator on construction sites. He is also a member of Local 106, the Operating Engineers Union. He has apprentice rating with that union. Presently Mr. Martin is working as a truck driver for DHL. Mr. Martin has a New York State Class A Commerical Drivers License. He also has numerous other licenses and certificates, including certifications as a Crane Operator, a NYC Department of Buildings Rigging Worker, and an OSHA Construction and Safety Health course completion card. He is a member in good standing of the Laborers’ International Union of North America, Local Union 79. See Exhibit A.

Mr. Martin has also been recommended by Local 580, Ornamental Ironworkers, to the New York City Fire Department for a Burning and Fire Watch license. See Exhibit B.

In May of 2020, when crane operating work was not available, Mr. Martin went out and got a job driving a truck with DHL so that he could remain employed, notwithstanding the Covid-19 pandemic.

The four years on supervised release Mr. Martin has completed have been without incident, and he is now on low intensity supervision. I spoke by telephone with his supervising Probation Officer, Zondra Jackson, on October 7, 2020 and she told me "his attitude has been highly motivated since he began, and he maintains a positive attitude, and is an appropriate candidate for early termination."

Mr. Martin has shown exceptionally good behavior through his motivation and hard work. The specific and detailed list of his accomplishments in the workplace are a testament to his motivation and positive attitude.

CONCLUSION

Mr. Martin is an appropriate candidate for early termination of supervised release, as he meets the criteria and standards in all ways.

Respectfully submitted,



AVROM ROBIN

C:	A.U.S.A.	Marcia Cohen	(via ECF and email)
	U.S.P.O.	Zondra Jackson	(via email)

Attachments

EXHIBIT A

NCCCO CERTIFIED
Operator
Certification #: 1906176591
Certification Designations:
TLL

Issued to: **JOSHUA G. MARTIN**
Issued: **06/30/2019** Expires: **06/30/2024**

Kerry Hulse, President, NCCCO Board of Directors
Graham Brent, Chief Executive Officer, NCCCO
Verify cardholder status at www.verifycco.org. Subject to provisions of suspension or revocation.

National Commission for the Certification of Crane Operators

NEW YORK STATE USA
COMMERCIAL DRIVER LICENSE

ID **988 346 321** Class **A**

MARTIN
JOSHUA, G
4220 WILDER AVE
BRONX, NY 10466

Sex **M** Height **5'-11"** Eyes **BRO**
DOB **03/08/1988**
Expires **03/08/2024**
E **P**
RA **3 N2**
Issued **10/18/2019**

MEMBERSHIP CARD
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA
TERRY O'SULLIVAN, General President ARMAND E. SABITONI, General Secretary Treasurer

LiUNA!
Feel the Power

MEMBER **J. G. MARTIN** MEMBER NO. **4896767**
LOCAL **79** BIRTHDATE **03/08/1988** IND. **C** ENTRY **04/28/2017**
LOCAL UNION **79** 303
520 8TH AVENUE SUITE-679 6TH FLOOR
NEW YORK NY 10018

NYC DOB 16 HOUR RIGGING WORKER

JOSHUA MARTIN
CERTIFIED INSTRUCTORS:
PAUL PRIMIANO
WILLIAM LORIA

Date Completed: **10/10/2017**
REFRESHER DATE: 10/10/2021
Training Director: **Paul Primiano**
Cement and Concrete Workers
Locals 6A, 18A, 20

Certificate Number
1010171761

CERTIFICATE ISSUED BY NYC FIRE DEPT

CERT.# **88873930** N
ISSUED **11/04/2016** EXPIRES **11/04/2019**

NAME **JOSHUA G MARTIN** NOT
HOME **92 FITZGERALD DR 45B** FDNY
ADDR. **MIDDLETOWN, NY 10940** EMPLOYEE
FEE \$ **25.00** CAT. **\$92** TYPE **Fitness**
DESC. **SUPER PORT FUELED SPACE HEATER-CONST SITE**

EMPLOYER
WORK
LOCATION

OSHA
Occupational Safety
and Health Administration

15-602061509

This card acknowledges that the recipient has successfully completed:

30-hour Construction Safety and Health

This card issued to:
JOSHUA MARTIN

William Loria
Trainer Name

5/9/2018
Date of Issue

EXHIBIT B

502

LOCAL 580 EDUCATIONAL FUND

Employer Trustees

RANDALL P. MENT, Co-Chairman
PETER CARRIERO
RANDY RIFELLI

Union Trustees

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KEVIN MCKEON
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Second Floor

501-507 WEST 42nd STREET • NEW YORK, N.Y. 10036

- (212) 736-1224/1244 •
- FAX (212) 695-6520 •

July 2, 2020

Fire Department
Bureau of Fire Prevention
9 Metro Tech Center
Brooklyn, NY 11201-3857

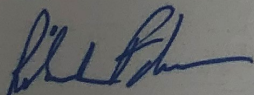
To Whom It May Concern:

This letter is to verify that JOSHUA MARTIN is a pre-apprentice in good standing with Local 580 Ornamental Ironworkers, and we recommend him for the burning and fire watch license.

If any further information is required, please contact me at (212) 736 -1224.

Thank you for your help in this matter.

Sincerely,



Richard Falasca
Director of Education

RF/dc